



DEC - 8 2003

ELMORE CRAIG, P. C.
209 MAIN STREET
NO. CHELMSFORD MA 01863

In re Application of	:
David A. Edwards et al	:
Serial No.: 09/383,054	: PETITION DECISION
Filed: August 25, 1999	:
Attorney Docket No.: 2685.1003-001	:

This is a decision on the petition under 37 CFR 1.181, filed June 24, 2003, to have an amendment after final rejection entered.

A review of the file history shows that the examiner mailed a Final Office action to applicants on November 14, 2002, setting a three month shortened statutory period for reply. Applicants replied on May 14, 2003, with an amendment after Final rejection and request for three month extension of time and fee therefor, proposing amendments to claims 50, 63-66, 69, 91, 103-106 and 128-131 with cancellation of claims 51 and 92. A Notice of Appeal and fee therefor was filed concurrently. The examiner considered the proposed amendment and denied entry by means of an Advisory action mailed May 28, 2003, with the statement that the "examiner has not searched the claims with this more restrictive language."

Applicants then filed a "Request for Reconsideration and Petition Under 37 CFR 1.181" requesting review of the examiner's action. The examiner treated the submission as a request for reconsideration and not as a petition since it was unclear that it should be treated as a petition, and again denied entry of the amendment for essentially the same reasons by means of a second Advisory Action mailed August 4, 2003. Upon telephone inquiry by applicants, it was made clear that the Request should have been treated as a petition, thus this decision.

Upon review of the amendment and reasons for denial of entry, it is concluded that applicants have merely incorporated the limitations of a rejected dependent claim into an independent claim. As such the amendment raises no new issues and inherently must have been searched and examined by the examiner since the dependent claim was rejected. Such amendment does not affect the rejection of record and does reduce or simplify the issues for appeal without raising any new issues. In view thereof the amendment will be entered.

Applicants' petition is **GRANTED**

The amendment filed May 14, 2003, will be entered.

Applicants remain under obligation to file an appropriate Appeal Brief or take other appropriate action within the time period set by the filing of the Notice of Appeal on May 14, 2003.

Should there be any questions with respect to this decision, please contact William R. Dixon, Jr., by mail addressed to: Director, Technology Center 1600, P.O. Box 1450, Alexandria, VA 22313-1450, or by telephone at (703)308-3824 or by facsimile transmission at (703) 305-7230.

John Doll 
Director, Technology Center 1600